

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	Docket No. 12-268
Opportunities of Spectrum Through Incentive	)	
Auctions	)	
	)	

**REPLY COMMENTS OF LOCAL MEDIA TELEVISION**

Local Media TV Holdings LLC (“Local Media”), the parent company of the licensees of five Class A broadcast television stations, hereby submits reply comments in response to the Commission’s *Notice of Proposed Rulemaking* (“*NPRM*”) in the above-captioned proceeding.<sup>1</sup> Local Media agrees with the numerous commenters who share the Commission’s desire for a successful incentive auction that will produce immense consumer benefit and ultimately “provide highly valued wireless broadband services.”<sup>2</sup> The FCC’s goal, however, will go unfulfilled without maximum broadcaster participation. To encourage robust participation, Local Media encourages the Commission to adopt auction parameters which stress transparency and simplicity.<sup>3</sup> The Commission has a single opportunity to run a successful auction, and thoughtful decision making should not be sacrificed for speed. To adequately fuel the supply side of the auction dynamic and ensure a successful process, Local Media offers specific comment on the *NPRM*’s proposals to ensure vigorous and active broadcaster participation.

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<sup>1</sup> *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357 (2012) (“*NPRM*”).

<sup>2</sup> *NPRM*, ¶ 26.

<sup>3</sup> *See, e.g.*, Comments of CTIA® -- The Wireless Association, at 14-15; Comments of Consumer Electronics Association, at 14-15.

**I. THE COMMISSION SHOULD EVALUATE THE REVERSE AUCTION BIDS OF ALL DIGITAL CLASS A STATIONS BASED ON THE STATION'S LICENSED FACILITY ON THE DATE OF THE REVERSE AUCTION.**

The Commission's disparate treatment in evaluating reverse auction bids of similarly-situated Class A stations based on the date of their digital transition must be rejected as inequitable. Class A television stations have until September 1, 2015 to complete their transition from analog to digital operations. Whether or not a Class A station completed the transition before or after February 22, 2012 is immaterial to the date on which the Commission should evaluate facilities for the purpose of reverse auction bids. The *NPRM*'s proposal for disparate treatment of Class A stations must be rejected in favor of equitably evaluating all digital Class A facilities as of the date the reverse auction commences.

The *NPRM* proposes to evaluate the facilities of Class A stations which completed their digital transition by February 22, 2012 as of that date, while those stations which did not complete their digital transition, but do so before the date the reverse auction commences, will be evaluated as of the reverse auction date.<sup>4</sup> Largely because no reasoned explanation exists, the FCC fails to justify handling these Class A stations differently. It is prohibited for the FCC to "appl[y] different standards to similarly situated entities and fail[] to support this disparate treatment with a reasoned explanation and substantial evidence in the record[.]"<sup>5</sup> In *Melody Music*, the D.C. Circuit remanded an FCC denial of a license renewal, stating that the FCC "must explain its reasons and do more than enumerate factual differences, if any" and "must explain the relevance of those differences to the purposes of the Federal Communications Act."<sup>6</sup> Here,

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<sup>4</sup> *Id.*, ¶ 80.

<sup>5</sup> *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005).

<sup>6</sup> *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965); *see also FEC v. Rose*, 806 F.2d 1081, 1089 (D.C. Cir. 1986) ("[A]n agency's unjustifiably disparate treatment of two similarly situated parties works a violation of the arbitrary-and-capricious standard.").

beyond enumerating that some Class A stations have not yet transitioned to digital facilities because time remains to do so under the September 1, 2015 deadline, the *NPRM* provides no explanation of why a Class A station's digital transition date is relevant to the date as of which the Commission should evaluate a station's facilities.

In effect, the Commission's proposal levels a baseless penalty on those Class A stations which diligently completed the digital transition. While Local Media agrees that it "would be fundamentally unfair" to those Class A licensees that have yet to convert to digital operation for the Commission to protect their facilities as of February 22, 2012,<sup>7</sup> the *NPRM* should not replace one inequity with another and disadvantage early DTV adopters vis-à-vis their Class A competitors as part of the auction process. With the "benefits of digital broadcast technology" well established,<sup>8</sup> prompt digital transition by Class A stations has allowed them to compete with full-power digital television stations. Moreover, the policy advanced by the *NPRM* stands in stark contrast to the *LPTV DTV Second Report and Order*, in which the FCC set the September 1, 2015 deadline for Class A stations to convert from analog to digital operation.<sup>9</sup> There, the FCC made certain that "stations should not be penalized for getting an early start on the transition process" and that the 2015 date would "encourage stations to file applications for their digital facilities as soon as possible."<sup>10</sup> Furthermore, Class A stations that have made investments in improving their digital facilities should not be foreclosed from submitting those improved facilities for auction. As stated by Casa En Denver, "the Commission should continue

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<sup>7</sup> *NPRM*, ¶ 115.

<sup>8</sup> *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732, ¶ 6 (2011) ("*LPTV DTV Second Report and Order*").

<sup>9</sup> *Id.*, ¶ 2.

<sup>10</sup> *Id.*, ¶ 14. Commission policy has consistently sought "to hasten the transition of low power television stations to digital operations." *Id.*, ¶ 3.

to provide licensees with incentives to continue to improve digital services via facilities upgrades prior to the commencement of the reverse auction process.”<sup>11</sup>

Such unjust treatment undoubtedly will discourage auction participation by those Class A stations, lower the supply of available spectrum, and raise the risk of auction failure. While the downside is clear, the benefits of such disparate treatment are non-existent. Instead, by evaluating all Class A station facilities as of the date of reverse auction, the Commission will avoid the inequitable *de facto* penalty proposed by the *NPRM*, place all digital Class A stations on the same footing, and encourage participation in the reverse auction.

## **II. THE COMMISSION’S AUCTION RULES SHOULD FACILITATE MAXIMUM PARTICIPATION THROUGH TRANSPARENCY AND SIMPLICITY.**

The *NPRM* solicits broadcasters’ input “on how to design the incentive auction so as to facilitate their participation and make it as easy as possible for them to submit successful bids[.]”<sup>12</sup> Section 6403 of the Spectrum Act dictates that the Commission has but one opportunity to conduct the auction. Auction parameters based on simplicity and transparency will ensure robust broadcaster participation, which in turn will help ensure a successful auction. Simply put, the more information broadcasters have to ascertain the value of their spectrum, the more likely they are to participate effectively in the auction. With that in mind, Local Media provides the following recommendations:

***Bid Collection.*** Local Media recommends that the Commission adopt the hybrid option proposed in the *NPRM* of a descending clock auction combined with the proxy bid option.<sup>13</sup>

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<sup>11</sup> Comments of Casa En Denver, at 3.

<sup>12</sup> *NPRM*, ¶ 36.

<sup>13</sup> *See id.*, ¶ 39.

This dynamic procedure will “make participation simpler and less expensive for bidders.”<sup>14</sup> Indeed, the descending clock auction “is designed to make it very easy for broadcasters to make optimal bids” and “provide stations with relatively straightforward bidding incentives.”<sup>15</sup> As stated by the Consumer Electronics Association, the descending clock auction “would greatly reduce the burden of auction preparation.”<sup>16</sup> And because “the auction will look similar from the broadcasters’ perspective,” the descending clock format will maximize transparency.<sup>17</sup> The more information broadcasters have, the more likely broadcasters will be active auction participants. However, as some participants may find the descending clock option too complicated, bidders should be allowed to submit a proxy bid to secure their right to participate in the auction at the right price.

***Flexible Band Plan.*** The Commission recognizes that there will be “non-uniform amounts of relinquished broadcast TV spectrum in each geographic area.”<sup>18</sup> As different markets will yield different outcomes, Local Media supports a flexible band plan that will allow for the maximum amount of spectrum to be cleared in each geographic area. Foisting rigid band plans on willing auction participants will place an unnecessary restraint on available spectrum. Local Media supports EOBC “that any approach should maximize the amount of reclaimed spectrum in the largest markets,”<sup>19</sup> and agrees with CTIA that the band plan should “flexible

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<sup>14</sup> *Id.*, ¶ 40; *NPRM*, Appendix C, at 2 (“[T]he auction process needs to be simple and easy enough to encourage and facilitate the participation of a wide array of broadcasters.”); Thomas Hazlett, David Porter & Vernon Smith, White Paper, *Incentive Auctions, Economic & Strategy Issues* (June 12, 2012), available at <http://www.arlingtoneconomics.com/studies/WhitePaper.pdf> (stating that “the auction process needs to be transparent and simple”).

<sup>15</sup> *Id.*, Appendix C, at 2, 12.

<sup>16</sup> Comments of the Consumer Electronics Association, at 31.

<sup>17</sup> *Id.*, Appendix C, at 3.

<sup>18</sup> *Id.*, ¶ 136.

<sup>19</sup> Comments of the Expanding Opportunities for Broadcasters Coalition, at 13.

enough to accommodate varying amounts and configurations of spectrum relinquished through the incentive auction process.”<sup>20</sup>

**Reserve Price.** Other than setting an initial offer in the descending clock format which will attract maximum broadcast participation,<sup>21</sup> the Commission should reject implementing a reserve price in the reverse auction process.<sup>22</sup> The value assigned to a particular station’s spectrum should directly correlate to the importance of that station relative to the Commission’s goal of clearing a certain amount of spectrum in a certain market. Certain stations may hold more strategic value because of their technical parameters or location, and that value should be recognized at auction. The auction parameters will provide adequate protection to ensure that the chosen bids reflect true value without the need for stipulating a maximum payment, which would unreasonably limit a station’s value.

**Payment Determination.** Local Media supports paying winning bids based upon the threshold price, which is the highest amount the broadcaster could have bid and still had its bid accepted.<sup>23</sup> As broadcasters will lack extensive information about their spectrum’s value, threshold pricing will encourage broadcasters to remain in the auction and openly bid down to their reserve price, thereby maximizing participation. Local Media agrees with EOBC that threshold pricing “better accounts for the difficulty of establishing a value for broadcast spectrum *ex ante* and which seems implicit in the way the FCC has described its descending clock auction mechanism.”<sup>24</sup> By contrast, adoption of an actual price structure will

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<sup>20</sup> Comments of CTIA® -- The Wireless Association, at 18.

<sup>21</sup> See Comments of Telecommunications Industry Association, at 15 (“[I]t would make little sense at a conceptual level to offer prices only slightly above the market valuation for the station as an ongoing broadcast enterprise.”).

<sup>22</sup> *Id.*, ¶ 53.

<sup>23</sup> *Id.*, ¶¶ 51-52.

<sup>24</sup> Comments of the Expanding Opportunities for Broadcasters Coalition, at 10.

unnecessarily cause some broadcasters to exit the auction for fear that they would receive less than market value for their station. Because the Commission will be armed with more information about supply needs, Local Media supports that “all the computational challenges fall on the FCC” rather than broadcasters.<sup>25</sup>

*Participants should not be excluded from the forward auction.* Just as robust broadcaster participation is a necessary component of a successful auction, so too is maximum participation from wireless providers seeking spectrum in the forward auction. Local Media agrees with T-Mobile that the FCC should not “adopt a blanket exclusion of even dominant incumbents from the bidding process.”<sup>26</sup> Restricting the participation of key wireless providers, either with explicit bans or with restrictive divestiture models, would undermine Congressional and Commission objectives by driving down auction revenues and greatly increasing the risk of a failed auction.

### **III. BROADCAST TELEVISION LICENSEES OPERATING IN THE T-BAND SHOULD NOT BE FORECLOSED FROM PARTICIPATING IN THE REVERSE AUCTION.**

The Commission should clarify that broadcast television licensees operating on channels 14-20 (the “T-Band”) may participate in the reverse auction and provide clarity regarding the impact of future public safety T-band proceedings on T-Band broadcast television licensees.<sup>27</sup> In the *NPRM*, the Commission broadly stated that the Commission would “not address T-Band services in this Notice.” Under “Subtitle A—Reallocation of Public Safety Spectrum,” the Spectrum Act mandated that T-Band spectrum “currently used by public safety eligibles as

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<sup>25</sup> *Id.*, Appendix C, at 4.

<sup>26</sup> Comments of T-Mobile USA, Inc., at 2.

<sup>27</sup> *See id.*, ¶ 19.

identified in [47 C.F.R. § 90.303]” must be reallocated by the Commission by 2021.<sup>28</sup> Broadcast licensees in the T-Band operate on a co-primary basis with Private Land Mobile Radio Service (“PLMRS”) and Commercial Mobile Radio Service (“CMRS”) licensees.<sup>29</sup> These PLMRS and CMRS licensees “provide public safety and other PLMRS systems and CMRS operations.”<sup>30</sup>

The Spectrum Act’s reallocation of T-Band public safety entities is a completely distinct issue from T-Band broadcast licensees’ ability to participate in the reverse auction. To the extent that the *NPRM* inadvertently forecloses participation of these broadcasters, the FCC would unnecessarily limit the amount of available spectrum in the reverse auction and needlessly complicate the eventual clearing of the T-Band. Instead, the Commission should explicitly clarify that T-Band broadcast licensees may participate now in the reverse auction and provide the necessary clarity concerning the future of the T-Band as it pertains to these broadcasters.

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<sup>28</sup> 47 U.S.C. § 1413(a).

<sup>29</sup> *Id.*, ¶ 19.

<sup>30</sup> *Id.*, ¶ 19.



#### IV. CONCLUSION.

Local Media supports proposals in the *NPRM* which will maximize broadcaster participation through simplicity and transparency. In addition, the Commission should avoid disparate treatment of Class A stations and evaluate all digital Class A facilities as part of the reverse auction bid process as of the date the reverse auction commences.

Respectfully submitted,

By: /s/ Monish Kundra

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